

COVID-19 Provider Relief Fund – General Distribution Attestation and Application Process¹

*This material is intended to be informational and does not constitute legal advice regarding any specific situation. In all instances, we advise providers to consult with counsel prior to making any decisions with respect to attesting to or applying for General Distribution Payments. This information is based on publicly available guidance and documents **released through May 22, 2020**.² Additional details and aspects of the PRF payments may be released and all aspects are still subject to potential change.*

Alston & Bird is prepared to advise clients on the business and legal implications of attesting to and applying for additional Provider Relief Fund Payments.

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Key Resources and Important Links

- [General information](#) on the PRF, including eligibility requirements, Terms and Conditions, and relevant attestation and data submission portals
- Provider Relief Fund [FAQs](#)
- [Round 1](#) Terms and Conditions
- [Round 2](#) Terms and Conditions
- [PRF Attestation Portal](#) – not attesting (or rejecting) by the relevant deadline will result in deemed acceptance of the payment(s) and the relevant Terms and Conditions
- [Payment Portal](#) – required for all GD Payment recipients
- [Payment Portal User Guide](#)
- **CARES Provider Relief line: 866-569-3522**

¹ This guide was developed based on publicly available information from HHS, including the most recent [GD FAQs](#) (last updated 5/21/2020), information on the Provider Relief Fund [webpage](#), and the [Payment Portal User Guide](#).

² No additional relevant updates have been released since this date.

Background – General Distribution (GD) Payments

The Provider Relief Fund (PRF) was established through the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*. Pursuant to the CARES Act and the *Paycheck Protection Program and Health Care Enhancement Act*, \$175 billion in grants will be disbursed from the Office of the Assistant Secretary for Preparedness and Response (ASPR) Public Health and Social Services Emergency Fund (PHSSEF) through the PRF. Of the \$175 billion, \$50 billion has been allocated for “General Distribution” (GD) to Medicare facilities and providers.

Overall (\$50 billion distribution)

- Available for providers who billed Medicare in 2019
- **Expected Combined GD = (Individual Provider Revenues/\$2.5 trillion) X \$50 billion**

Round 1 (\$30 billion distribution)

- Based on 2019 Medicare fee-for-service (FFS) payments
- Distributed via automatic payments and paper check:
 - \$26 billion on 4/10; \$4 billion on 4/17
 - State-by-state breakdown available [here](#), Congressional district breakdown available [here](#)
- **Attestation deadline is now 90 days after receipt of payment³:**

Date of Payment	Attestation Deadline
April 10, 2020	July 9, 2020
April 17, 2020	July 16, 2020
April 24, 2020	July 23, 2020

- **Round 1 Payment = (2019 Medicare FFS Payments/\$484 billion) X \$30 billion**

Round 2 (\$20 billion distribution)

- Allocated so that the *entire* \$50 billion General Distribution is allocated proportional to approximately 2% of each recipient’s prior year individual provider revenues
- Payments started to go out on 4/24 (based on Medicare cost reports)
- Payments will continue to go out on a weekly, rolling basis based on provider submissions and data validation to the [Payment Portal](#) (expected within 10 business days of applying)
- **The deadline to apply for Round 2 Payments (i.e., if not automatically received) is June 3⁴**
- **Round 2 Payment = General Distribution Payment - Round 1 Payment**

Additional Considerations and Scenarios

The guidance and example scenarios listed below are general and intended to capture common situations. There are other scenarios with additional considerations not addressed in this document, including:

- Mergers and acquisitions;
- Sales and changes in ownership;
- Complex organizational structures that complicate tax return and lost revenue submissions;
- Parent entities submitting applications for Round 2 Payments on behalf of subsidiary entities; and
- Vertically-integrated organizations that have patient care revenues and non-patient care revenues.

³ According to [HHS press release](#) on May 22, 2020. It is unclear whether this 90-day deadline applies to both electronic deposits and paper check issuances, and whether this impacts the Round 2 application deadline (June 3).

⁴ According to [HHS press release](#) on May 20, 2020.

Preliminary Steps and Actions

Phase	Key Action	Additional Detail																					
Eligibility/Threshold Requirements	Received GD payment from \$30B distribution (Round 1 Payment)	These payments were delivered on April 10 and April 17																					
	Meet eligibility requirements and appropriately received the Round 1 Payment	<ul style="list-style-type: none"> Received Medicare FFS payments in 2019 Provides or provided care for individuals after January 31, 2020 Not currently terminated from participating in Medicare or precluded from receiving payment through Medicare Advantage or Part D Not currently excluded from participation in a Federal health care program Does not currently have Medicare billing privileges revoked 																					
Prior to Applying	Calculate expected combined GD Payment (approximately 2% of individual provider revenues): (Individual Provider Revenues/\$2.5 trillion) X \$50 billion	<ul style="list-style-type: none"> Gross receipts or sales based on provider 2017, 2018, or 2019 tax return <table border="1"> <thead> <tr> <th>Federal Tax Classification:</th> <th>From:</th> <th>On IRS Form:</th> </tr> </thead> <tbody> <tr> <td>Sole Proprietor/ Disregarded Entity (LLC)</td> <td>Box 1</td> <td>1040, Schedule C</td> </tr> <tr> <td>C Corporation</td> <td>Box 1a</td> <td>1120</td> </tr> <tr> <td>S Corporation</td> <td>Box 1a</td> <td>1120-S</td> </tr> <tr> <td>Partnership</td> <td>Box 1a</td> <td>1065</td> </tr> <tr> <td>Trust</td> <td>Box 1</td> <td>1040, Schedule C</td> </tr> <tr> <td>Tax-Exempt Organization</td> <td>Box 9</td> <td>990</td> </tr> </tbody> </table>	Federal Tax Classification:	From:	On IRS Form:	Sole Proprietor/ Disregarded Entity (LLC)	Box 1	1040, Schedule C	C Corporation	Box 1a	1120	S Corporation	Box 1a	1120-S	Partnership	Box 1a	1065	Trust	Box 1	1040, Schedule C	Tax-Exempt Organization	Box 9	990
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	Gather relevant information that must be submitted	<ul style="list-style-type: none"> TINs for entities that received prior PRF payments <ul style="list-style-type: none"> If applicable, TINs of subsidiary organizations that received prior PRF payments, but do not file separate tax forms Amount of payments received PRF payment transaction numbers/check numbers Electronic copy of most recently filed tax form 																					
Recoupment Considerations	<ul style="list-style-type: none"> Estimate lost revenues Assess whether GD payment aligns with Round 1 or Round 2 methodology 	<ul style="list-style-type: none"> Generally, HHS does <u>not</u> intend to recoup funds as long as lost revenue and increased expenses exceed the PRF payment received If a provider believes it was “overpaid,” received a payment “in error,” or anticipates that lost revenues or increased expenses “will be materially less than” the GD Payment received, HHS guidance states that the provider should return the funds in entirety and submit appropriate revenue documents so HHS can determine the correct payment 																					

SCENARIO A: Received an automatic Round 2 Payment on April 24

Step	Key Action	Additional Details/Specific Steps
1	Compare the total GD Payment received (i.e., Round 1 + Round 2) against the expected combined GD payment	<ul style="list-style-type: none"> If the total exceeds the expected combined amount, be sure you can justify the amount received (e.g., ensure lost revenue and increased expenses exceed the amount of funding received) In general, HHS does not intend to recoup payments so long as lost revenue and increased expenses exceed the amount received
<i>If GD Payment exceeds lost revenue and increased expenses, you may be subject to increased scrutiny/audit risk (see SCENARIO C)</i>		
2	Confirm receipt and attest to Terms and Conditions at the PRF Attestation Portal	<p>You will have to:</p> <ul style="list-style-type: none"> Confirm payment information for TIN(s) receiving payments Attest to the relevant Terms and Conditions for the Round 1 Payment and the Round 2 Payment <p>Note:</p> <ul style="list-style-type: none"> The deadline has been extended from 30 days to 90 days after receipt of payment For example, if you received payment on April 10, the attestation deadline has been extended from May 9 to July 9
3	Provide revenue and tax information at the Payment Portal	<p>You will have to:</p> <ul style="list-style-type: none"> Enter relevant billing TIN(s) (up to 20 TINs at a time) <ul style="list-style-type: none"> You may submit additional, separate requests for more TINs Verify payment information (i.e., payment amounts per TIN and account/check number) Authenticate and validate an email address Complete the required Application Information fields Submit appropriate federal tax return <ul style="list-style-type: none"> This should be the most recent form filed with the IRS (2017, 2018, or 2019) aligned with your Federal Tax Classification (above) Provide estimated lost revenue for March and April 2020 <ul style="list-style-type: none"> You may use any reasonable method of estimating the revenue in March and April compared to the same period had COVID-19 not occurred (e.g., if you have a budget that does not take into account the impact of COVID-19, the estimated lost revenue could be the difference between the budgeted and actual revenue) You may also compare the revenues to the same period in 2019

SCENARIO B: Did NOT receive an automatic Round 2 Payment on April 24

Step	Key Action	Additional Details/Specific Steps
1	Compare the payment received from the Round 1 against the expected combined GD Payment	<ul style="list-style-type: none"> If the expected combined GD Payment exceeds the Round 1 Payment, you may be eligible for the Round 2 Payment Be sure you can justify the total GD Payment (e.g., ensure lost revenue and increased expenses exceed the amount of funding received) In general, HHS does not intend to recoup payments so long as lost revenue and increased expenses exceed the amount received
2a	If the expected combined GD Payment is less than the Round 1 Payment: <ul style="list-style-type: none"> STOP – Proceed to SCENARIO D 	Current HHS guidance states: Payments are determined based on the lesser of 2% of a provider’s 2018 (or most recent complete tax year) net patient revenue or the sum of incurred losses for March and April. If the initial General Distribution payment you received between April 10 and April 17 was determined to be at least 2% of your annual patient revenue, you will not receive additional General Distribution payments.
2b	If the expected combined GD Payment is more than the Round 1 Payment: <ul style="list-style-type: none"> Confirm receipt and attest to Terms and Conditions for the Round 1 Payment at the PRF Attestation Portal 	You will have to: <ul style="list-style-type: none"> Confirm payment information for TIN(s) receiving payments Attest to the relevant Terms and Conditions for the Round 1 Payment Notes: <ul style="list-style-type: none"> The deadline has been extended from 30 days to 90 days after receipt of payment If you received payment on April 10, the attestation deadline is July 9
3	Provide revenue and tax information at the Payment Portal	<ul style="list-style-type: none"> In order to be eligible for the additional payment, you must attest to the Round 1 Payment and apply for the additional (i.e., Round 2) payment by <u>June 3, 2020</u> See SCENARIO A, Step 3
4	Within 90 days of receiving the Round 2 Payment, confirm receipt and attest to Terms and Conditions at the PRF Attestation Portal	You will have to: <ul style="list-style-type: none"> Confirm payment information for TIN(s) receiving payments Attest to the relevant Terms and Conditions for the Round 2 Payment

SCENARIO C: Received GD Payment is more than expected or received in error

Step	Key Action	Additional Details/Specific Steps
1	Determine whether GD Payment aligns with Round 1 or expected combined GD Payment	<ul style="list-style-type: none"> If the received GD Payment exceeds the estimated amount under either method, you may have been overpaid and if not returned, the payment could be subject to recoupment Verify the TIN(s) and payment amount(s) received (i.e., ensure the payment aligns with the correct TIN), and confirm there were no errors in the cost report submission (if applicable)
2	Compare the received GD Payment against anticipated lost revenues or increased expenses	<ul style="list-style-type: none"> Depending on your specific situation, received GD Payment(s) in excess of lost revenues or increased expenses could be an estimated amount that may be subject to recoupment/could be owed back if not returned
3	<p>Return funds</p> <p>Note: this may <u>not</u> be required, but providers may face potential recoupment risk if not returned.</p>	<p>Current HHS guidance states: <i>A provider may not return a portion of a Provider Relief Fund payment... Generally, if a provider anticipates that its COVID-related lost revenues or increased expenses will be materially less than the value of the Provider Relief Fund payment received, the provider should reject the <u>entire</u> General Distribution payment and submit the appropriate revenue documents through the General Distribution portal to facilitate HHS determining their correct payment.</i></p> <p>Note: providers should consult with counsel for guidance prior to rejecting the entire GD Payment.</p> <ul style="list-style-type: none"> You may return the GD Payment by going into the PRF Attestation Portal within 90 days of receiving payment and indicate why the funds are being rejected The PRF Attestation Portal is expected to guide you through the attestation process to reject funds <ul style="list-style-type: none"> Contact financial institution and ask the institution to refuse the payment by initiating an ACH return using the ACH return code of “R23 – Credit Entry Refused by Receiver” If payment is received via paper check, reject the payment in the PRF Attestation Portal and destroy the check (if not deposited) or mail a paper check to UHG with a notification of the request to return the funds
4	If you return funds, to receive the appropriate payment, provide revenue and tax information at the Payment Portal	<p>Current HHS guidance states: <i>If a provider believes it was overpaid or may have received a payment in error, it should reject the entire General Distribution payment and submit the appropriate revenue documents through the General Distribution portal to facilitate HHS determining their correct payment.</i></p> <p>See SCENARIO A, Step 3</p>

SCENARIO D: Expected Combined GD Payment is less than Round 1 Payment

Step	Key Action	Additional Details/Specific Steps
1	Compare the expected combined GD Payment against Round 1 Payment	<ul style="list-style-type: none"> This will give you an expected combined amount that may be subject to recoupment/could be owed back if not returned
2	Confirm Round 1 Payment received aligns with Round 1 Payment formula	<ul style="list-style-type: none"> If Round 1 Payment received exceeds the Round 1 Payment formula, but is less than the expected combined GD Payment, see SCENARIO C
3	Compare Round 1 Payment against lost revenues or increased expenses	<p>Current HHS guidance states: Generally, HHS does not intend to recoup funds as long as a provider’s lost revenue and increased expenses exceed the amount of Provider Relief funding a provider has received. HHS reserves the right to audit Relief Fund recipients in the future to ensure that this requirement is met and collect any Relief Fund amounts that were made in error or exceed lost revenue or increased expenses due to COVID-19. Failure to comply with the Terms and Conditions may be grounds for recoupment.</p> <ul style="list-style-type: none"> If lost revenues or increased expenses exceed Round 1 Payment, you may still be eligible to retain these funds

Key Considerations:

- Current HHS guidance is ambiguous as to whether attesting to and retaining funds in this situation is permissible. Providers should consult with counsel prior to accepting this payment.
- Providers in this situation may not apply for additional (i.e., Round 2) payments.
- All providers (including those only accepting the Round 1 Payment) must submit revenue and tax information at the [Payment Portal](#).

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